IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/12/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice N. KANNADASAN

W.A. No.1010 OF 1999

Indian Overseas Bank
rep. by its General Manager
Central Office
Chennai 600 002 ... Appellant

-Vs-

K. Perichiappan ... Respondent

Appeal under Cl.15 of the Letters Patent against the order dated 11-6 -1999 made inW.P. No.9706 of 1991

!For Appellant :: Mr. N.G.R. Prasad for
M/s. Row & Reddy

^For Respondent :: Mr. K. Chandru, Senior Counsel
for Mr. C. Prakasam

:JUDGMENT

V.S. SIRPURKAR, J.

The appellant Indian Overseas Bank (hereinafter called 'the Bank') challenges the judgment of the learned single Judge whereby, the writ petition filed by the respondent herein (hereinafter called 'the delinquent-officer) was allowed by the learned single Judge.

2. The delinquent-officer had joined the bank in 1968 and continued to serve in the various capacities. A scheme was launched providing loans in the year 1982-83 under Integrated Rural Development Programme (IRDP) to help small and marginal farmers. These loans were used to be sanctioned by the regional office and, according to the policy, it was the delinquent-officer who granted the loans as the Manager of the branch on the recommendations of the Panchayat Union. The loans were supposedly to be given directly to the recipient agriculturists and it is to them that the cheques of the loan amounts were being issued.

2.1. Some complaints were received from the recipients in November 1983. However, they were withdrawn. In the meantime, the delinquent-officer

was transferred to the Regional office of the bank at Tiruchy as an officer. After his transfer, his successor collected some material, on the basis of which a charge-sheet came to be framed against him, containing charges of misappropriation of funds as also the irregularities in connection with the grant of loans as also its disbursements. The charges were based on the written complaints received and the investigations made. The enquiry was duly held and completed and ultimately the delinquent-officer was ordered to be dismissed. The delinquent-officer, therefore, filed an appeal to the General Manager provided in the bank rules. However, the same was also dismissed, necessitating the employee to file a writ petition before the learned single Judge.

2.2. It was the case of the delinquent-officer before the learned single Judge that the enquiry was not properly and fairly held; that he was not even heard on the question of punishment; that the enquiry officer had failed to see that the delinquent-officer was deliberately framed at the instance of some persons, who were inimical to him. It seems that the learned Judge found fault with the merits of the case and recorded his independent findings, suggesting thereby that the enquiry officer had wrongly held the delinquent-officer guilty. He also found that the appellate authority had mechanically dismissed the appeal. The learned Judge also rewrote the finding of facts. Thus the petition was allowed and reinstatement of the delinquent-officer was ordered, with all the attendant service benefits together with full backwages and the backwages also ordered to carry interest at the rate of 12% per annum from the date of dismissal till the date of reinstatement. It is this judgment of the learned single Judge, which has fallen for consideration in the present appeal.

3. Shri N.G.R. Prasad, learned counsel appearing for the bank has pointed out that this was a case where a full-fledged and a detailed enquiry had taken place wherein both the oral as well as documentary evidence was tendered. He pointed o re was voluminous material on record available suggesting the misconduct on the part of the delinquent-officer, which was in the serious nature of misappropriation, falsification of records as also the criminal breach of trust. He further points out that a detailed enquiry report was given by the enquiry officer, discussing the evidence of the witnesses threadbare and it is on this basis that the enquiry officer has come to the conclusion that the delinquent-officer had in fact committed misappropriation and had also cheated the bank. The learned counsel, therefore, urges that the learned single Judge travelled completely outside his jurisdiction under Art.226 in considering the questions of fact and upsetting the findings of facts recorded by the enquiry officer as if the learned Judge was an appellate court. Learned counsel argues that the learned single Judge has nowhere bothered even to refer to the evidence of the witnesses which evidence was clearly incriminating evidence while setting aside the finding of the facts and coming to the conclusion that the delinquent-officer was liable to be exonerated on all counts. With reference to several Supreme Court decisions, the learned counsel urges that it was not possible for the learned single Judge to enter into the arena of appreciation of evidence and to set aside the finding of facts as if he was an appellate court. According to him, in the writ petition, the learned single Judge was

obliged to consider only whether there was incriminating material available on record and if such material was in fact available then, he could not take up on himself the task of appreciating the evidence and come to the contrary conclusions. Learned counsel, therefore, urges that the whole order is without jurisdiction and tends to be illegal.

4. Shri K. Chandru, learned senior counsel did not seriously dispute the position of law as regards the jurisdiction of the learned single Judge as culled out from the Supreme Court judgments. He, however, tried to argue the case on merits suggesting that in fact there was no incriminating material even before the learned single Judge and, therefore, the learned counsel earnestly argued that on merits, there was no material available before the enquiry officer and, therefore, the findings of the enquiry officer were not only improper but perverse also and as such, the learned Judge has committed no error in upsetting the findings. Learned counsel urged that it is not as if the High Court cannot at all look into the findings. He pointed out that where there was no material and where there was total denial of fair trial, the High Court certainly look into the findings as has been done by it in the present case.

5. On the backdrop of this rival submissions, it has to be seen firstly as to whether there was any material before the enquiry officer and whether his findings were perverse so as to require interference.

6. There were in all three charges which have been subdivided further. Under the first charge, it is alleged that in respect of the number of small loans, the borrowers alleged that they gave a sum of Rs.300/- each through one Mahalingam as illegal gratification to the employee. Under the sub-heading, it is alleged that the employee had granted fresh loans to the existing borrowers/near relatives with a view to appropriate the loan pro ceeds for the previous loans outstanding and also to avail the benefit of subsidy without ensuring the genuineness of the loans granted. By way of second charge under the heading 'Agricultural Advances', it was alleged that while granting sericulture advances, the officer demanded and accepted illegal gratification of Rs.500/- each from the agriculturists, whose list was provided in the charge-sheet, for releasing the second stage of the sericulture loan sanctioned to the borrowers. In the subheading of this charge by way of charge No.2(b), it was alleged that the concerned officer had not ensured the genuineness of the loans granted in the cases listed in Annexure to the charge-sheet. In that the employee had failed to carry out the pre-sanction inspection to ensure the genuineness of the loans requirements; seocndly, he failed to verify the end use of loans immediately after release of the loans , and thirdly, he had released the loan proceeds only Rs.2,900/- as against Rs.4,000/- sanctioned to the borrowers directly for purchase of bullocks and carts leading to misutilisation of the funds by the borrowers and a portion of the balance amount of Rs.1,100/- in each case was misappropriated by the employee and the middlemen; fourthly, it was stated that the borrowers have not purchased carts/animals out of the loan proceeds; and fifthly, it was alleged that the employee had not insured the carts/animals under the master policy of United Insurance Company Limited. By way of charge No.2(c) under the heading 'Sheep Rearing', it was alleged that

the employee opened savings bank account in the personal name of the President and the loan granted to the sheep breeders society was credited to this account instead of opening the account in the name of the society after obtaining permission from the Assistant Director of Animal Husbandry. It was secondly alleged that the employee had not utilised the services of branch Agricultural Officer for purchase of sheep and verification of utilisation. It was thirdly alleged that out of balance of Rs.1,000/- each, the employee had appropriated Rs.200/- each for share capital of the member and Rs.130/- each towards insurance and the balance of Rs.670/- remained unacounted, which totalled to Rs.28,810/-. Fourthly, it was alleged that out of 43 units of sheep financed by the employee, 17 borrowers were not having any sheep unit and out of the remaining 26 units, some of the parties did not purchase animals as per requirement leading to shortfall of the number of animals purchased. Fifthly it was alleged that in respect of the above loans, Purchase Committee was not formed, pre as well as post inspection had not been done; animals purchased were not ear-tagged, with the result insurance company was not settling the claims; as per the sanction stipulation, 10% of the loan amount, i.e. Rs.17,200/- was not deposited in RDP, that the employee had failed to take registered mortgage of lands for twice the value of the loan amount by the members in favour of society as per sanction, that he had failed to obtain the veterinary Assistant Surgeon's certificate showing the purchase of the animals. Under charge No.2(d), under the subheading 'Diary', it was alleged that the employee had misappropriated Rs.147/- each while releasing the first stage of diary loans and also Rs.173.75 each while releasing the second stage of loans in 78 cases listed in the annexure. In this behalf, it was alleged that while disbursing the loans, he had also committed the following lapses inasmuch as the loans were disbursed without any pre-sanction inspection; loan amounts disbursed were not paid directly to vendors of animals; that a sum of Rs.978/- was paid to one Mr. Subbumahalingam on 28-12-1983 being the amount collected from 39 borrowers for being passed on to the Veterinary Assistant Surgeon for tatooing animals when in fact this service was bound to be done at free of cost by the Veterinary surgeon. It was also alleged that he had not formed the Purchase Committee and also had not properly accounted for in regard to insurance claim relating to the account of Mr. Karugannan. Lastly, it was suggested under the heading 'Oil Engine and Tyre Cart' that the loans were granted for enjoying subsidy benefit and they were not need-based inasmuch as the borrowers were not having any tyre carts and oil engines.

7. In this enquiry, the accounts of hundreds of the borrowers were checked and their statements were also recorded. It seems that a reply was given to the charge-sheet, denying all the allegations. The enquiry officer seems to have written an enquiry report, running into about hundred pages. He had taken into account about 158 documents tendered on behalf of the Management and about 24 documents tendered on behalf of the defence. As many as 18 witnesses were examined; 4 out of them for proving the alleged irregularities committed in grant of sericulture loans; about three witnesses for proving the alleged irregularities in grant of loans for purchase of bullocks and carts; one for proving the irregularities committed in grant of diary loan; office-bearers of the Milk Producers' Co-operative Society; one witness representing the guarantors as also the Government officers. The

delinquent-officer examined himself as a witness.

8. We have carefully seen the whole report which suggests that the enquiry was held for about 21 days. Each charge has been discussed separately in the enquiry report with reference to the adduced evidence. There is a specific reference to the evidence of the witnesses and their cross-examination. The enquiry officer has then recorded his findings vis-a-vis the each charge and the subheads thereof. We must say that the enquiry report is drawn very meticulously and the findings have been separately given against each charge. Lastly, the enquiry officer has given the gist of imputations and the findings. Ultimately, a conclusion has been reached that the delinquent officer had granted many loans by demanding and accepting illegal gratification; that he had misappropriated a part of the loan amount; that he did not ensure the genuineness of the loans and violated the norms and terms of sanction of regional office for granting the loans and that many of the loans have become overdue. It was, therefore, concluded that the charge-sheeted officer had failed to ensure and protect the interests of the bank with utmost integrity, honesty, devotion and diligence and acted otherwise than in his best judgment.

9. All the irregularities alleged against the delinquent have been threadbare discussed on the basis of the evidence adduced by the witnesses separately in respect of each charge. Seeing the whole charge-sheet and the enquiry officer's report, it cannot be said that this was a case where there was no material available or for that matter, this was a case where the enquiry officer had written perverse findings.

10. On this backdrop, when we go through the judgment of the learned single Judge, it is apparent that the first seven paragraphs merely contain the statements of facts and the rival contentions, as they emerge from the affidavits filed before the learned single Judge. The learned Judge has not quoted the charges faced by the delinquent officer. The learned Judge has, in paragraph 8, proceeded to again give a resume of the allegations against the delinquent officer and has made a startling observation that in the enquiry officer's report, there was no specific charge against the delinquent officer. There is again a reference to the observations in the order of the disciplinary authority and on the basis of those observations, it is suggested that there was no specific corruption charge or misappropriation of the large amounts of the bank by the petitioner. The learned Judge has then made a reference to the fact that though in the disbursement of cart-loans, the delinquent officer had misappropriated Rs.2,000/- in each case, it was the admitted case of the bank that another sum of Rs.900/- has been paid by the intermediary and the delinquent but at the same time accepts that record is there to show that entire sum of Rs.4,000/- has been received by the borrowers. Without naming any particular charge, the learned Judge proceeds to hold that since the loan granted to the co-operative society was re-paid, there will be no question of misappropriation. The learned Judge further proceeds to hold even if it is taken that all the proved charges as it is and has found established by the enquiry officer and confirmed by the disciplinary authority, there is no co-relation at all in between the proved charges and the punishment awarded. It is then suggested that the petitioner

was not given the opportunity to explain his case before awarding the punishment.

11. Now, in fact, the enquiry report itself is dated 27-7-1988 and the disciplinary authority's order is also dated 18-8-1988 before the law was laid down in Ramzan'khan s case. However, the learned Judge has found fault with the whole enquiry report solely on the ground that the bank was not put to any loss. Very strangely, it is observed that there is no complaint against the delinquent-officer, alleging misappropriation of loan amount or demanding gratification. In fact, the whole report is replete with such complaints. Even if it is true that the co-operative society had made good the loss caused to the bank but, in the process of disbursing the loans, the delinquent officer had earned illegal gains. It is then suggested that the investigating officer has coerced the witnesses to give false statements after the delinquent officer was transferred from his station. A general statement is to be found to the effect that there is no specific instance that the petitioner has caused loss or damage to any amount of the bank. Then the learned Judge has very strangely written a finding in internal page 15 of the judgment in the following words:

"From all the above aspects of this case, it is very clear that in relation to the gravity of the proved charges, the punishment of dismissal from service awarded to the petitioner herein is highly disproportionate and against the accepted norms and also the principles of natural justice. ... ...

Therefore, I am of the view that this is a clear case wherein great and grave injustice has been done to the petitioner and the award of punishment in this case is highly disproportionate to the proved charges and for this single reason itself the impugned orders of the respondents have to be quashed."

It is then quoted:

"Further even though a number of decisions have been cited by the bank in support of their case, because of the above clear finding arrived at by this Court, and also due to the peculiar facts and circumstances of the case, they are not helpful to the bank."

Needless to say, not a single decision relied upon has either been considered or even mentioned in the judgment. Ultimately, the learned Judge has allowed the writ petition and has directed the bank to reinstate the petitioner within thirty days from the date of judgment with all attendant service benefits together with full backwages and also granted 12% interest per annum on those backwages from the date of dismissal till the date of reinstatement. It is, therefore, obvious that the learned Judge has treaded into the dangerous area of appreciation of evidence and even without quoting the names of the witnesses has straight away disproved the evidence. Likewise, even without naming the charges in particular has discarded the findings which were so painstakingly given on the basis of the evidence. We have deliberately given the break-up of the witnesses and the points on which they were examined. It is apparent from that, all the witnesses examined, though some of them were partly disbelieved, had supported the case of the Management and it is only on that basis that the finding of guilt was reached by the enquiry officer on the charges. We cannot see any justification to the order of the learned single Judge in setting aside those findings even without discussing them. We have deliberately quoted the kind of discussion that is discerned from the judgment. We are unable to agree with the learned Judge that in this case the

charges had not been proved.

12. Again, we fail to follow as to how firstly when the learned Judge had held that the charges were not proved, the question of quantum of punishment could be discussed. The learned Judge has clearly held that the punishment of dismissal for the proved charges was disproportionate. Such being the state of affairs, it is not possible for this Court to agree with the judgment of the learned single Judge.

13. In this behalf, the law stated by the Supreme Court is well settled. In the celebrated decision in HIGH COURT OF JUDICATURE AT BOMBAY THROUGH ITS REGISTRAR v. SHRI UDAYSINGH (JT 1997 (5) 298), the Supreme Court had examined the question regarding the jurisdiction of the High Court or the Tribunal, as the case may be, while dealing with the disciplinary matters. The learned Judges referred to the decision in B.D. Chaturvedi v. Union of India & others (JT 1995 (8) SCC 65) and relied upon the observations therein to the following effect:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding to fact or conclusion.

The Court further cautions that such finding must be based on some evidence. The Court then points out that the technical rules of Evidence Act do not apply to the disciplinary proceedings and, therefore, when the authority accepts the evidence and the conclusions receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of charge. The Court further stated that the court/tribunal, in its power of judicial review, does not act as the appellate authority to re-appreciate the evidence and to arrive at its' own independent findings on the basis of the evidence. The Court had cautioned that the court/tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. A further reference has been made to a number of other decisions and ultimately the Court went on to record:

"When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."

Seeing these authorities, it is not possible for us to agree with the learned Judge as the learned Judge has travelled outside his jurisdiction in setting aside the findings, re-appreciating the evidence and in substituting his own

findings in the place of the enquiry officer.

14. Shri Chandru, however, relied on the decision in KAILASH NATH GUPTA v. ENQUIRY OFFICER (R.K. RAI) ALLAHABAD BANK AND OTHERS (2003 SCC (L&S) 1137) to suggest that the courts always have the power to interfere with the quantum of punishment and that where the punishment was disproportionate to the charges, it is always open for the High Court to consider the question. From the aforementioned judgment, learned senior counsel argues that this was also a case where there were irregularities in disbursement of the loans but, however, the Supreme Court took a lenient view on the ground that they were mere " irregularities" in disbursement of loans more particularly in the rural atmosphere. It is pointed out that the Supreme Court had remanded the matter to the High Court to consider the question of quantum of punishment. This argument is advanced by the learned senior counsel particularly because we are also concerned here in this case with the disbursement of loans to the small and marginal farmers.

15. We have gone through the reported decision carefully and find that there is an essential difference in the facts. In the reported decisions, under the five charges, what is alleged is only irregular nature of loan and the procedural la bursement of the loans. There are no allegations of bribery, misappropriation, cheating, breach of trust, etc. in the said decision. It is on this backdrop that the Supreme Court has found fault that the punishment was disproportionate. In paragraph 11, it is clearly mentioned by the Supreme Court that the power of interference with the quantum of punishment was extremely limited. But when relevant factors were not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is apparent that the Supreme Court has noted that in that case there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subjectmatter of his removal from service. The Court has specifically noted that there was nothing to indicate that the appellant had misappropriated any money or committed any act of fraud and that there were some procedural irregularities which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service.

16. That is precisely the case here and the fraudulent acts of the delinquent officer have been brought home in the enquiry and the charge of demanding and accepting illegal gratification has also been held to be proved. Under the circumstances, we cannot accept the contention of the learned counsel that we should take a lenient view on the question of quantum of punishment or for that matter remand the case back to the appellate authority or the disciplinary authority. In our view, a correct punishment has been given considering the gravity of the charges held to be proved on the basis of the available material before the enquiry officer. We, therefore, allow this appeal, set aside the judgment of the learned single Judge and order the dismissal of the writ petition. Under the circumstances, there

shall be no order as to the costs. C.M.P. No.10107 of 1999 is closed.

Index:Yes
Website:Yes

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